Tanjong Marina Management Sdn Bhd v Penang Port Sdn Bhd

HIGH COURT (PULAU PINANG) — ORIGINATING SUMMONS NO 24–672–04 OF 2012
CHEW SOO HO JC
8 JUNE 2012

Legal Profession — Breach of rules of etiquette — Conflict of interest — Application to prevent firm of advocates and solicitors from representing plaintiff company — Partner in legal firm also executive director of plaintiff — Partner actively involved in transactions and dispute between plaintiff and defendant — Whether direct conflict of interest — Whether direct pecuniary interest in case — Whether whole legal firm disqualified from representing plaintiff — Legal Profession (Practice and Etiquette) Rules 1978 rr 3, 4, 5(a), 7(b), 27, 28, 29 & 32 — Legal Profession Act 1976

Legal Profession — Liability as fiduciary — Conflict of interest and duty — Application to prevent firm of advocates and solicitors from representing plaintiff company — Partner in legal firm also executive director of plaintiff — Partner actively involved in transactions and dispute between plaintiff and defendant — Whether direct conflict of interest — Whether direct pecuniary interest in case — Whether probability of partner being material witness for plaintiff — Whether whole legal firm disqualified from representing plaintiff — Legal Profession (Practice and Etiquette) Rules 1978 rr 3, 4, 5(a), 7(b), 27, 28, 29 & 32 — Legal Profession Act 1976

The defendant applied to disqualify or forbid the firm of advocates and solicitors, Messrs BH Lawrence & Co ('the firm') from representing the plaintiff in this action on the grounds that one of the partners of the firm, namely Mr BH Lawrence was an executive director of the plaintiff who was actively involved in the transactions and the dispute between the plaintiff and the defendant. All affidavits filed in all proceedings were affirmed by BH Lawrence as the executive director of the plaintiff. The defendant alleged that the involvement of the firm in this action will vividly raise a conflict of interest as the firm had the direct pecuniary interest since its partner was an executive director who had pecuniary interest in the plaintiff. The defendant submitted that the representation of the firm for the plaintiff contravened rr 3, 4, 5(a), 7(b), 27, 28, 29 and 32 of the Legal Profession (Practice and Etiquette) Rules 1978 ('the LPR') under the Legal Profession Act 1976 ('the LPA'). The plaintiff contended that rule 6.04 of the Bar Council Rulings ('BCR') allows a law firm to act for its partners in respect of a personal claim by or against that partner

that and rule 6.08 of the BCR allows an advocate and solicitor who is a director of a company to act on behalf of his company.

Held, allowing the application with cots:

(1) If BH Lawrence were to appear personally for the plaintiff when he himself was an executive director of the plaintiff and was directly involved in the whole dispute in this case, the elements of the direct conflict of interest and the probable embarrassment, the inability to maintain the professional conduct, professional independence on account of his personal and direct pecuniary interest in the case as well as the probability that he may be the material witness for the plaintiff being its executive director and person who had sworn all the affidavits filed for the plaintiff, based on the rules in the LPR, BH Lawrence would undoubtedly be unable to act and perform the duties and functions of an advocate and solicitor professionally with his personal pecuniary interest being directly involved (see para 6).

(2) Under rule 6.04 of BCR, a law firm may act for one of its partners 'in respect of a personal claim' by or against that partner. In the instant case, there was no such personal claim by or against Mr BH Lawrence but the claim of the plaintiff company where he was an executive director. Hence rule 6.04 was not applicable here. Further, rule 6.08 of BCR does not confer the right on the said advocate and solicitor to act for the company in which he is a director or substantial shareholder (see para 7).

(3) Once an advocate and solicitor has the personal and pecuniary interest, he or she and the legal firm as well as the legal assistants in the same firm should not be permitted to represent those persons in the suits concerned. The same principle ought to apply in the instant case where the personal and pecuniary interest of the advocate and solicitor, BH Lawrence, was sufficient ground pursuant to rule 27(a) of the LPR to disqualify and/or debar not only himself but his legal firm, partners and legal assistants from representing the plaintiff company (see para 12).

(4) To permit the firm or its partners or legal assistants to represent the plaintiff would likely attract the perception akin to permitting Mr BH Lawrence to represent the plaintiff where he himself cannot represent on account of his clear personal and/or pecuniary interest. There was a tangible or probable risk that justice might not appear or be seen to be done (see para 15).

[Bahasa Malaysia summary

Defendan memohon untuk membatalkan atau melarang firma peguambela dan peguamcara, Tetuan BH Lawrence & Co ('firma') daripada mewakili plaintif dalam tindakan ini atas alasan bahawa seorang daripada rakan kongsi firma tersebut, iaitu Encik BH Lawrence adalah pengarah eksekutif plaintif

yang secara aktif terlibat dalam transaksi dan pertikaian antara plaintif dan defendan. Kesemua afidavit yang difailkan dalam kesemua prosiding di sini disahkan oleh BH Lawrence sebagai pengarah eksekutif plaintif. Defendan mendakwa bahawa penglibatan firma itu dalam tindakan ini akan secara nyata membangkitkan kepentingan bertentangan memandangkan firma tersebut mempunyai kepentingan kewangan secara langsung memandangkan rakan kongsinya adalah pengarah eksekutif yang mempunyai kepentingan kewangan atas plaintif. Defendan berhujah bahawa representasi firma tersebut untuk plaintif bercanggah peraturan-peraturan 3, 4, 5(a), 7(b), 27, 28, 29 dan 32 Peraturan-Peraturan (Amalan dan Etika) Profesion Undang-Undang 1978 ('Peraturan-Peraturan') di bawah Akta Profesion Undang-Undang 1976 (Akta'). Plaintif berhujah bahawa peraturan 6.04 Bar Council Rulings ('BCR') membenarkan firma undang-undang untuk bertindak bagi rakan kongsinya berkaitan tuntutan persendirian oleh atau terhadap rakan kongsi tersebut bahawa peraturan 6.08 BCR membenarkan peguambela dan peguamcara yang mana adalah pengarah syarikat untuk bertindak bagi pihak syarikatnya.

Diputuskan, membenarkan permohonan dengan kos:

(1) Jika BH Lawrence akan mewakili secara peribadi untuk plaintif apabila dia adalah pengarah eksekutif plaintif dan terlibat secara langsung dalam keseluruhan pertikaian dalam kes, unsur-unsur percanggahan kepentingan langsung dan kemungkinan malu, ketidakupayaan untuk mengekalkan tingkah laku profesional, kebebasan profesional atas kepentingan peribadi dan kewangan langsung dalam kes dan juga kemungkinan dia mungkin menjadi saksi untuk plaintif kerana dia adalah pengarah eksekutif dan orang yang mengangkat sumpah kesemua afidavit yang difailkan untuk plaintif, berdasarkan peraturan dalam Peraturan-Peraturan BH Lawrence sudah pasti tidak boleh secara profesional bertindak dan menjalankan tugas-tugas serta fungsi-fungsi peguambela dan peguamcara dengan kepentingan kewangan peribadinya terlibat secara langsung (lihat perenggan 6).

(2) Di bawah peraturan 6.04 BCR, firma undang-undang boleh bertindak untuk seorang rakan kongsinya 'in respect of a personal claim' oleh atau terhadap rakan kongsi tersebut. Dalam kes ini, tiada tuntutan peribadi sedemikian oleh atau terhadap BH Lawrence tetapi tuntutan plaintif yang mana dia adalah pengarah eksekutif. Maka peraturan 6.04 tidak diguna pakai di sini. Selanjutnya, peraturan 6.08 BCR tidak memberikan hak kepada peguambela dan peguamcara tersebut untuk bertindak untuk syarikat yang mana dia adalah pengarah atau pemegang saham substansial (lihat perenggan 7).

(3) Apabila peguambela dan peguamcara mempunyai kepentingan peribadi dan kewangan, dia dan firma undang-undang dan juga pembantu-pembantu undang-undang dalam firma yang sama tidak

patut dibenarkan untuk mewakili orang-orang yang di dalam guaman yang berkenaan. Prinsip yang sama patut diguna pakai dalam kes ini yang mana kepentingan peribadi dan kewangan peguambela dan peguamcara, BH Lawrence, adalah alasan yang mencukupi menurut peraturan 27(a) LPR untuk membatalkan dan/atu menghalang bukan saja dirinya tetapi firma undang-undangnya, rakan kongsi dan pembantu-pembantu undang-undang daripada mewakili plaintif (lihat perenggan 12).

(4) Untuk membenarkan firma atau rakan kongsinya atau pembantu-pembantu undang-undangnya untuk mewakili plaintif mungkin akan menimbulkan persepsi seperti membenarkan BH Lawrence mewakili plaintif yang mana dia sendirinya tidak boleh mewakili atas dasar kepentingan peribadi dan atau kewangannya. Terdapat risiko yang ketara atau kemungkinan bahawa keadilan tidak dapat diperolehi atau dilaksanakan (lihat perenggan 15).]

Notes

For cases on conflict of interest, see 9 *Mallal's Digest* (4th Ed, 2012 Reissue) paras 1443–1444.

For cases on conflict of interest and duty, see 9 *Mallal's Digest* (4th Ed, 2012 Reissue) paras 1602–1608.

Cases referred to

Dr Trilochan Kaur d/o Mohan Singh v The Malaysian Dental Council & Anor [2009] 4 MLJ 244; [2010] 2 CLJ 1037, HC (refd)

Everingham v Ontario (1992) 88 DLR (4ht) 755 (refd)

Paruvathy a/p Palany v Sathiasealan a/l Govindasamy [1999] 5 MLJ 151, HC (refd)

Perbadanan Pembangunan Pulau Pinang v Tropiland Sdn Bhd [2010] 2 CLJ 1061, HC (refd)

PP v Vengadasalam & Ors [1990] 1 MLJ 507; [1990] 2 CLJ (Rep) 893, HC (refd)

RS Muthiah v Pembinaan Fiba Sdn Bhd [2004] 4 MLJ 78; [2004] 2 CLJ 917, HC (refd)

Sykt Pengangkutan Sakti Sdn Bhd v Tan Joo Khing t/a Bengkel Sen Tah [1997] 5 MLJ 705, HC (refd)

Tunku Mohsin bin Tunku Khalid v Bukit Barisan Sdn Bhd & Ors [2009] 9 MLJ 528, HC (refd)

Vijayalakhsmi Devi Nadchatiram v Saraswathy Devi Nadchathiram [1996] 4 CLJ 430, HC (refd)

Vijayalakshmi Devi Nadchatiram v Saraswathy Devi Nadchathiram [2000] 4 CLJ 870, FC (folld)

Wee Choo Keong v Pendakwa Raya [1990] 2 MLJ 239; [1990] 3 CLJ (Rep) 346, HC (refd)

Legislation referred to

Companies Act 1965
Legal Profession (Practice and Etiquette) Rules 1978 rr 3, 4, 5(a), 7(b), 27, 28, 29, 32
Legal Profession Act 1976

Jayasingam s/o Ratnasingam (BH Lawrence & Co) for the plaintiff.
Arumugam Ganapathy (Shaleni a/p R Anpualagan) (Ghazi & Lim with him) for the defendant.

Chew Soo Ho JC:

ENCLOSURE 8 (SUMMONS IN CHAMBERS)

[1] Enclosure 8 is filed by the defendant to disqualify or forbid the firm of advocates and solicitors, Messrs BH Lawrence & Co from representing the plaintiff in all further proceedings in this action under the inherent jurisdiction of the court.

[2] The principal ground of the defendant is that one of the two partners in the firm of Messrs BH Lawrence & Co namely Mr BH Lawrence is an executive director of the plaintiff who is actively involved in the transactions and the dispute between the plaintiff and the defendant herein. Affidavit in support of this originating summons filed against the defendant and all other affidavits filed in all proceedings herein were affirmed by BH Lawrence as the executive director of the plaintiff. The defendant alleged that the involvement of Messrs BH Lawrence & Co in this action will vividly raise a conflict of interest as the legal firm has the direct pecuniary interest since its partner is an executive director who has pecuniary interest in the plaintiff.

[3] The defendant alleged and submitted that the representation of Messrs BH Lawrence & Co for the plaintiff in this action contravenes rr 3, 4, 5(a), 7(b), 27, 28, 29 and 32 of the Legal Profession (Practice and Etiquette) Rules 1978 ('the LPR') under the Legal Profession Act 1976 ('the LPA').

[4] The main contention of the plaintiff is, inter alia, the reliance on r 6.04 of the Bar Council Rulings which states that a law firm may act for one of its partners, consultants or legal assistants in respect of a personal claim by or against that partner, consultant or legal assistant and r 6.08 of the same Bar Council Rulings which plaintiff submitted that an advocate and solicitor who

is a director of a company can act on behalf of his company.

FINDINGS OF COURT

[5] The various rules under which the plaintiff is alleged to have contravened are rr 3, 4, 5(a), 7(b), 27, 28, 29 and 32 of the LPR and they are reproduced below for ease of reference:

(a) r 3 (a) provides that an advocate and solicitor shall not accept a brief if he is or would be embarrassed;

(b) r 4 states that no advocate and solicitor shall accept a brief in a case where he knows or has reason to believe that his own professional conduct is likely to be impugned;

(c) r 5(a) states that no advocate and solicitor shall accept a brief if such acceptance renders or would render it difficult for him to maintain his professional independence or is incompatible with the best interest of the administration of justice;

(d) r 7(b) provides that no advocate and solicitor may accept the position of an executive director or executive secretary of a company without the express consent of the Bar Council;

(e) r 27(a) states that an advocate and solicitor shall not appear in any matter in which he is directly pecuniary interested;

(f) r 28(a) says that an advocate and solicitor shall not appear in court or in Chambers in any case in which he has reason to believe that he will be a witness in respect of a material and disputed question of fact, and if while appearing in a case it becomes apparent that he will be such a witness, he shall not continue to appear if he can retire without jeopardizing his client's interests;

(g) r 29 provides that except when essential to the ends of justice or as to merely formal matters, an advocate and solicitor appearing in any cause shall not testify in court on behalf of his client only in that cause; and

(h) r 32 expresses that the feeling existing between clients shall not be allowed to influence counsel in their conduct and demeanour towards each other or towards parties and their witnesses in the case.

[6] In so far as all the Rules cited above except for r 7(b), if BH Lawrence were to appear personally for the plaintiff herein when he himself is an executive director of the plaintiff and is directly involved in the whole dispute of the parties in this case, the elements of the direct conflict of interest and the probable embarrassment, the inability to maintain the professional conduct, professional independence on account of his personal and direct pecuniary

interest in the case as well as the probability that he may be the material witness for the plaintiff being its executive director and person who had sworn all the affidavits filed for the plaintiff in relation to the above cited Rules in the LPR are abundantly clear to this court that BH Lawrence can undoubtedly be unable to act and perform the duties and functions of an advocate and solicitor professionally with his personal pecuniary interest being directly involved. The impartiality in the pursuit of the course of justice and the duty to the court may be compromised as it is human nature that one will not be loathed to abate one's personal interest particularly pecuniary interest in the conduct of the case where his personal and/or pecuniary interest is at stake. In this respect, the fact that BH Lawrence has direct pecuniary interest in the plaintiff being its executive director and shareholder and thereby cannot act for himself is virtually agreed upon by Mr Jayasingam, counsel from the firm of Messrs BH Lawrence acting for the plaintiff.

[7] However the contention in the instant case is that BH Lawrence is not personally appearing for the plaintiff but his firm where he is a partner is. Does the aforesaid rules of practice and etiquette extend to the firm involving partners and other advocates and solicitors in the same firm? Under the Bar Council Rulings vide rule 6.04, plaintiff contended that the law firm may act for one of its partners and by rule 6.08 of the same Rulings which states that an advocate and solicitor who is a director or substantial shareholder (as defined in the Companies Act 1965) of a company shall not act for the other party to any transaction in which the company is a party, learned counsel for the plaintiff argued that an advocate and solicitor who is a director of a company can act on behalf of his company. From the reading of rule 6.04, the clear ruling is that a law firm may act for one of its partners 'in respect of a personal claim' by or against that partner. In the instant case, there is no such personal claim by or against Mr BH Lawrence but the claim of the plaintiff company where he is an Executive Director. I do not think that rule 6.04 applies in the circumstances of this case.

[8] As to rule 6.08, it expresses specifically that an advocate and solicitor who is a director or substantial shareholder of a company, shall not act for the other party to any transaction in which the company is a party. I do not agree that rule 6.08 confers the right on the said advocate and solicitor to act for the company in which he is a director or substantial shareholder. Rule 6.08 does not say as submitted by learned counsel for the plaintiff that an advocate and solicitor who is a director of a company can act on behalf of his company. I do not think such contention to be tenable. If it is so intended that an advocate and solicitor can or is permitted to do as submitted, I see no reason why it does not specifically add a simple clause to the effect that 'but is permitted to act for his company.' I find such an omission to rule 6.08 is intended in line with the LPR which provide the numerous rules of practice and etiquette that govern

the conduct of advocates and solicitors to avoid the conflict of interest and the professional integrity of the Bar such as r 27(a) above cited. Consequently, I do not find the aforesaid two rules under the Bar Council Rulings to be applicable in the instant case.

[9] On r 7(b) of the LPR, there is no evidence whether Mr BH Lawrence had obtained the express consent of the Bar Council to hold the position of an executive director in the plaintiffs company. Since this point was not asserted in submission or even if parties have pursued, I do not find this rule to be relevant to the issue of disqualification from representation of a party in court. I need not advance further elaboration.

[10] Reverting to the pertinent question whether learned counsel Mr Jayasingam of Messrs BH Lawrence & Co or an advocate and solicitor from the same firm can represent the plaintiff company in the instant case, Mr Jayasingam submitted on various authorities such as *Wee Choo Keong v PP* [1990] 2 MLJ 239; [1990] 3 CLJ (Rep) 346, *Public Prosecutor v Vengadasalam & Ors* [1990] 1 MLJ 507 at p 514; [1990] 2 CLJ (Rep) 893 at p 900 and *Vijayalakhsmi Devi Nadchatiram v Saraswathy* [1996] 4 CLJ 430 at p 431 on r 28 of the LPR or the blood relationship between litigants and the advocate and solicitor and that a working relationship between partners of a firm is not a personal relationship so that a lawyer can always act for his firm, inter alia.

[11] Learned counsel for the defendant submitted that the LPR in fact does extend to the legal firm of the advocate and solicitor who has pecuniary interest or personal interest in the company which his firm is representing. Rule 28(a) should be extended to the firm inclusive his partners and legal assistants of the said advocate and solicitor who has the personal interest in the company as held in cases such as *Paruvathy a/p Palany v Sathiasealan a/l Govindasamy* [1999] 5 MLJ 151, *Sykt Pengangkutan Sakti Sdn Bhd v Tan Joo Khing t/a Bengkel Sen Tah* [1997] 5 MLJ 705; r 27(a) was also invoked to debar an advocate and solicitor who had pecuniary interest in the case as held in *RS Muthiah v Pembinaan Fiba Sdn Bhd* [2004] 4 MLJ 78; [2004] 2 CLJ 917; r 3(b)(ii) LPR was applied in the case of *Tunku Mohsin bin Tunku Khalid v Bukit Barisan Sdn Bhd & Ors* [2009] 9 MLJ 528 to bar the law firm, the partners and legal assistants of the said advocate and solicitor who had a personal relationship with one of the litigant in that case. The other authority cited pertaining to rr 3, 4 and 5 of the LPR is *Dr Trilochan Kaur d/o Mohan Singh v The Malaysian Dental Council & Anor* [2009] 4 MLJ 244; [2010] 2 CLJ 1037. In *Vijayalakshmi Devi Nadchatiram v Saraswathy Devi Nadchathiram* [2000] 4 CLJ 870, the Federal Court, in overruling the decision of the Court of Appeal which was cited by Mr Jayasingham for the plaintiff in the [1996] 4 CLJ 430, 431, who apparently is not appraised of the Federal Court decision, affirmed the decision of the High Court which allowed the respondent, an advocate and solicitor, her firm of

advocates and solicitors or her legal assistants from acting as advocates and solicitors for the respective cases where she was found to have pecuniary interest. The Federal Court held, inter alia, that:

> [1] The Court of Appeal had erred in law in the interpretation of rr 3 and 27(a) LPR 1978 by not focussing their attention to the elementary tenet of construction in finding the meaning of 'personal relationship' and 'pecuniary interest'. Their approach should have been to find out the purpose of the said provisions.
>
> [2] …
>
> [3] Having regard to the pecuniary interest she was alleged to have in those disputed matters, r 27(a) LPR 1978 was applicable in the instant.
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> [4] Thus, in view of her personal relationship and of her pecuniary interest, the respondent was prohibited from representing those persons in the civil suits concerned.

[12] From the decision of the Federal Court above, it is amply clear that once an advocate and solicitor has the personal and pecuniary interest, he or she and the legal firm as well as the legal assistants in the same firm should not be permitted to represent those persons in the suits concerned. The same principle ought to apply in the instant case where the personal and pecuniary interest of the advocate and solicitor, BH Lawrence, which is not disputed, is sufficient ground pursuant to r 27(a) of the LPR to disqualify and/or debar not only himself but his legal firm, partners and legal assistants from representing the plaintiff company where BH Lawrence is undisputedly the executive director and substantial shareholder.

[13] In the cited case of *Perbadanan Pembangunan Pulau Pinang v Tropiland Sdn Bhd* [2010] 2 CLJ 1061, His Lordship Balia Yusof J (now JCA) has emphasised the preservation of the interests of justice that 'it is of utmost importance that justice should not only be done but should appear to be done. In the circumstances … there is a risk which may well be merely theoretical but still exists, that justice might not appear to be done' (*Thevenas and Thevenas* [1986] FLC 91 - 748 (Australia)). His Lordship went on to say the rational of denying the right of audience to counsel and the test to apply at pp 1066–1067 that:

> [8] On the power and the role of the court, Mandie J in *Martin v Gray* eferred to the position in Canada and set out the following passages from a decision of the full court of the Ontario Divisional Court in *Everingham v Ontario* (1992) 88 DLR (4ht) 755 at pp 761–762:
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> It is within the inherent jurisdiction of a superior court to deny the right of audience to counsel when the interests of justice so require by reason of conflict or otherwise. This power does not depend on the rules of professional conduct made by the legal profession and is not limited to cases where the rules are breached.

> The issue here is not whether or not the rule was breached, or whether the solicitor worked for the government. Nor is it solely whether the patient lost confidence in the process. The issue is whether a fair-minded reasonably informed member of the public would conclude that the administration of justice required the removal of the solicitor …
>
> The public interest in the administration of justice requires an unqualified perception of its fairness in the eyes of the general public … The goal is not just to protect the interests of the individual litigant but even more importantly to protect public confidence in the administration of justice …
>
> [9] The disqualification of a counsel is not imposed as a punishment for misconduct. Rather it is a protection for the parties and the wider interest of justice. The legitimacy of judicial decision depends in large part on the observance of the standards of procedural justice. There is the courts' concern with the administration of justice in a particular case and in the generality of cases and with the associated basic need to preserve confidence in the judicial system. The right to a fair hearing in the courts is an elementary but fundamental principle of our system of justice. The courts have an inherent jurisdiction to control its own processes except as limited by statute and as an incident to that inherent jurisdiction, it shall determine which persons should be permitted to appear before it as advocates. (*Black v Taylor* [1993] 3 NZLR 403).

[14] In the instant case, to permit BH Lawrence's legal firm or his partners or his legal assistants to represent the plaintiff will likely attract the perception akin to permitting Mr BH Lawrence to represent the plaintiff where he himself cannot represent on account of his clear personal and/or pecuniary interest. To this court, there is a tangible or probable risk that justice might not appear or be seen to be done. I wish to echo what has been cited by His Lordship Balia Yusof from the case of *Everingham v Ontario* (1992) 88 DLR (4ht) 755 that:

> The public interest in the administration of justice requires an unqualified perception of its fairness in the eyes of the general public … The goal is not just to protect the interests of the individual litigant but even more importantly to protect public confidence in the administration of justice …

[15] To be able to maintain and protect the public confidence in the administration of justice particularly in the conduct of a fair trial in a court of law, the impartiality and integrity of the Bar in the administration of justice in relation to the litigant in a suit cannot be undermined by allowing an advocate and solicitor, may he be a partner or a legal assistant from the same legal firm, to represent that litigant, as the plaintiff in the instant case, when the advocate and solicitor partner of the said legal firm has direct personal and/or pecuniary interest in that litigant company. To permit so may be seen or perceived as a 'back-door' way of the said advocate and solicitor representing himself or the company which he has the direct interest in the conduct of the case. This court

cannot condone such probable or tangible risk which affects the administration of justice in the conduct of a fair trial. The impartiality of the judicial system must not be compromised.

[16] The plaintiff had also raised an issue alleging that the defendant did not disclose sufficient particulars to support encl 8. The crux of this encl 8 is that Mr BH Lawrence has the direct personal and/or pecuniary interest in the plaintiff being its executive director and shareholder and he has sworn all affidavits for and on behalf of the plaintiff showing that he is the person who is directly and actively involved in the affairs and management of the plaintiff's company. This fact is not disputed. That, to this court suffices for the purpose of this interlocutory application. I do not find merit in this issue.

[17] For the foregoing reasons, I hold on a balance of probabilities and in the interest of justice that the firm of solicitors, Messrs BH Lawrence, its partners, and/or legal assistants should be disqualified or barred from representing the plaintiff as its advocates and solicitors in this proceeding. Consequently, I allow encl 8 application with costs in the cause.

Application allowed with costs.

Reported by Kanesh Sundrum